NOVA SCOTIA UTILITY AND REVIEW BOARD

ACTIVITY REPORT

APRIL 1, 2003 TO MARCH 31, 2005

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TABLE OF CONTENTS

INTRODUCTION 1

STRUCTURE 1

FUNCTION 2

ACTIVITIES 3
- Public Utilities Regulation 5
- Natural Gas Regulation 6
- Motor Carrier (Public Passenger) Regulation 7
- Railways Regulation 8
- Alcohol, Gaming and Amusements Regulation 8
- Planning and Municipal Boundaries Matters 8
- Assessment Appeals 9
- Expropriation Compensation Applications 10
- Criminal Injury Compensation Appeals 10
- Fire Safety Appeals 10

SUPPORT OF OTHER AGENCIES 10

CONTACTING THE BOARD 10

Appendix A - List of Statues 12

Appendix B - List of Regulated Utilities 13

NOVA SCOTIA UTILITY AND REVIEW BOARD

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INTRODUCTION

The Nova Scotia Utility and Review Board was established on December 14, 1992 by proclamation of the **Utility and Review Board Act** which consolidated the responsibilities and structures of four existing boards. Subsequently the Board was also assigned a number of additional responsibilities including, most recently in fiscal 2004, fire safety appeals. A list of statutes under which the Board has duties can be found at Appendix A.

This activity report is submitted as required by **s. 33(1)** of the **Utility and Review Board Act** and describes the Board's activities for the two fiscal periods commencing April 1, 2003 and ending March 31, 2005. Future Activity Reports will be prepared on a fiscal year basis. The Board's audited financial statements are included in the public accounts for the Province of Nova Scotia.

STRUCTURE

Members

The Nova Scotia Utility and Review Board, as of March 31, 2005, was composed of six full-time and one part-time member as follows.

Full-time:
- Peter W. Gurnham, Q.C., Chair
- Margaret A. M. Shears, Vice-chair
- David J. Almon
- Roland A. Deveau
- Wayne D. Cochrane, Q.C.
- Kulvinder S. Dhillon, P.Eng.

Part-time:
- John A. Morash, C.A., F.C.M.A., C.B.V.

Mr. Peter W. Gurnham, Q.C. was appointed as a full-time member of the Board on June 5, 2003 and was subsequently designated as Chair on October 23, 2004. Mr. John A. Morash, C.A., formerly a full-time member and Chair, was continued as a part-time member effective October 23, 2004 for a one year term. Subsequent to the reporting

period covered by this report Mr. Morash's appointment was renewed until October 2006.

It is with great sadness we note the passing of our colleague and friend, Mr. John L. Harris, Q.C., in December 2004. Mr. Harris was appointed to the Board of Commissioners of Public Utilities in 1975 and, on consolidation, to the Utility and Review Board in 1992.

The **Utility and Review Board Act** allows for a maximum of eight full-time and eight part-time members of the Board.

Staff

The Board has a number of full-time staff, including an Executive Director, a Regulatory Affairs Officer, an Appeals Officer, an Alcohol, Gaming and Amusements Officer, five Advisory Staff, a Controller, a Computer Services Officer, and thirteen administrative support staff. Staff of the Board are public servants.

The Regulatory Affairs Officer, the Appeals Officer and the Alcohol, Gaming and Amusements Officer have each been designated as a Clerk of the Board. They are responsible for receiving and processing all applications and appeals. The Clerks schedule all hearings, respond to questions from the public and handle distribution of Board decisions and orders.

The Advisory Staff are professionals who deal with technical matters pertaining to electricity, water and natural gas.

The Board also has staff assigned by government to assist with enforcement and administration relating to the **Motor Carrier Act** (public passenger). The inspection staff are responsible for all physical safety inspections of public passenger vehicles, investigations and enforcement generally. Staff of this division are Civil Servants.

FUNCTION

The Board is an independent quasi-judicial body which has both regulatory and adjudicative jurisdiction flowing from the **Utility and Review Board Act**. The Board hears applications and appeals under various statutes including the **Public Utilities Act, Gas Distribution Act, Pipeline Act, Municipal Government Act, Assessment Act, Motor Carrier Act, Expropriation Act, Victims' Rights and Services Act, Education Act, Liquor Control Act, Gaming Control Act**, and **Theatres and Amusements Act**. In March 2004 the Board was assigned the duties of the Fire Safety Appeal Board pursuant to the **Fire Safety Act**. A more complete list of statutes under which the Board has jurisdiction is included as Appendix A.

In carrying out its responsibilities the Board travels throughout the province. It holds hearings in or near the municipality affected by the application or appeal. Many of the

Board hearings are advertised in the local press. The Board uses telephone conferencing for some hearings. The Board has also conducted some hearings in the French language.

Board hearings are generally open to the public. Most hearings are one to two days in length although matters such rate hearings for large electric utilities or planning matters with significant public interest can be substantially longer. Where there may be significant public interest the Board invites public comment and may hold evening hearing sessions. The Board ordinarily sits in panels of one or three members although other compositions are possible. The hearings are recorded and, in some cases, transcribed.

The Board is required to issue written decisions – detailing reasons for findings – and orders in respect of applications and appeals. Decisions of the Board may be appealed to the Nova Scotia Court of Appeal upon any question of its jurisdiction or upon any question of law.

ACTIVITIES

The Board's decisions are distributed by subscription and are available on Quicklaw®. Decisions since 1999 are available on the Canadian Legal Information Institute web site (www.canlii.org).

The following chart provides additional detail on filings by major topic. Note that statistics do not include interlocutory matters but do include requests for approvals of work orders and complaints.

APPLICATIONS / APPEALS / REQUESTS FOR APPROVAL
JANUARY 1, 2000 - MARCH 31, 2005

Subject Matter	2000	2001	2002/ 2003*	2004	2005
Alcohol and Gaming - other	85	93	124	84	97
Assessment	122	35	59	42	65
Criminal Injury Compensation	10	5	6	3	4
Electric Utilities	89	107	144	154	84
Expropriation Compensation	1	3	3	1	1
Fire Safety***	NA	NA	NA	0	3
Gaming	22	20	24	14	5
Halifax-Dartmouth Bridge Commission	0	0	0	0	1
Liquor Licensing	172	188	251	175	153
Municipal Boundaries	0	2	3	2	3
Natural Gas	21	3	6	16	35
Planning	32	21	38**	29	43
Public Passenger	191	103	159	98	52
Railways	0	0	2	0	2
School Board Boundaries	8	0	0	0	2
Tax	2	0	0	0	0
Theatres and Amusements	0	3	5	6	1
Water Utilities	107	122	140	94	66
Totals	862	705	964	718	617

* Includes the fifteen month period from January 1, 2002 to March 31, 2003. Previous figures are for calendar years. For 2004 and future the figures are prepared on a fiscal year basis.

** Total includes one appeal filed under **Heritage Property Act**

*** New mandate added during fiscal 2004.

The following sections provide summary information on the Board's mandate under various statutes.

Public Utilities Regulation

Statutes: **Public Utilities Act**, R.S.N.S. 1989, c.380 as amended; **Halifax - Dartmouth Bridge Commission Act**, R.S.N.S. 1989, c.231 as amended; **Nova Scotia Power Privatization Act**, S.N.S. 1992, c.8.

The Board exercises general supervision of all water, electric, and steam heat utilities. This includes setting rates, tolls and charges; approving regulations for provision of service; approval of capital expenditures in excess of $25,000; and any other matter the Board feels is necessary to properly exercise its mandate. In addition, the Board deals with public complaints which have not been settled by the utility.

The Board is required to set the rates, tolls and charges to be paid for use of the two bridges operated by the Halifax-Dartmouth Bridge Commission in a like manner to that of a public utility.

Appendix B contains a list of utilities regulated by the Board during the reporting period.

Electric Utilities

A total of seven electric utilities are regulated. Of these the largest is Nova Scotia Power Inc. (NSPI). NSPI is a fully-integrated, publicly traded company incorporated under the **Companies Act (Nova Scotia)**. It is the successor to Nova Scotia Power Corporation, a crown corporation owned by the Province of Nova Scotia. NSPI generates, transmits and distributes most of the power produced in the province. As at December 31, 2004 the company owned generation capacity totalled 2,293 MW with another 25 MW contracted with independent power producers. The net book value of NSPI's assets was approximately $3 billion and the company served approximately 460,000 customers. All other electric utilities are owned and operated by municipalities. Only one of those utilities has generating capacity.

Electric utilities wishing to undertake capital projects must receive Board approval in advance for capital expenditures over $25,000. The Board assesses, among other things, the need for the proposed project, the reasonableness of the expenditure based on the cost estimate and the supporting technical information, and the financial impact on the utility and its customers of the capital project.

While the overall number of matters, including capital expenditure requests, appears to be declining, the frequency of larger and more complex hearings appears to be increasing. As a result, more effort is being spent on electrical utility matters overall than in past.

Water Utilities

As of the end of March 2005, the Board regulated 61 water utilities, all of which were municipally owned and/or operated. Each of these water utilities had schedules of rates and regulations approved by the Board. Utilities vary in size with several of the smaller water utilities having fewer than 100 customers and the largest, Halifax Regional Water Commission, having about 72,000 customers.

The Board must approve all amendments to rates and regulations and generally requires a public hearing for any matters of significance, particularly if the utility is proposing an increase in rates. Under the **Public Utilities Act** certain complaints fall within the Board's jurisdiction. The Board investigates these complaints against utilities and may, if appropriate, hold a public hearing. When considering complaints the Board's focus is on whether the utility has followed Board-approved regulations in its dealings with customers.

Water utilities wishing to undertake capital projects must receive Board approval in advance for capital expenditures over $25,000. The Board assesses, among other things, the need for the proposed project, the reasonableness of the expenditure based on the cost estimate and the supporting technical information, and the financial impact on the utility and its customers of the capital project.

Natural Gas Regulation

Statutes: **Gas Distribution Act**, S.N.S. 1997, c.4 as amended; **Pipeline Act**, R.S.N.S. 1989, c. 345 as amended; **Underground Hydrocarbons Storage Act**, S.N.S. 2001, c.37

Gas Distribution Act and Regulations

The **Gas Distribution Act,** revised in 2002, provides a framework for the "orderly development and operation of a gas delivery system" in Nova Scotia. The principal duty of the Board under the **Act** is to grant gas distribution franchises and licences to market natural gas, and to set rates for provision of gas. Franchise awards are subject to the approval of the Governor in Council. The Board must be satisfied that the granting of a franchise is in the public interest. Among the factors that the Board is directed to consider with respect to a franchise application is the demand for natural gas service, the availability of natural gas, the economic feasibility of the proposal and the financial capability of the applicant.

At present the only operating natural gas franchise holder is Heritage Gas Limited (HGL). HGL has continued to expand its operations in Dartmouth and is expected to begin laying pipe in Amherst later in 2005. The company has a full regulation class franchise for a period of 25 years for the Counties of Cumberland, Colchester, Pictou and Halifax, the Municipality of the District of East Hants and the Goldboro area of Guysborough County.

In September 2004 Strait Area Gas Corporation (SAGC) was granted approval for a full regulation class franchise for a period of 25 years covering areas in Inverness County, Antigonish County, Guysborough County (excluding Goldboro) and Richmond County, subject to certain conditions and also subject to the approval of the Governor in Council. SAGC has not yet satisfied the conditions imposed in the Order to activate the franchise.

Pipeline Act and Regulations

The **Pipeline Act** directs the Board to exercise control over the manner in which gas and oil pipelines and gas plant facilities are constructed, tested, maintained and operated. No person shall construct a pipeline or facility except pursuant to a permit issued by the Board and no person shall operate a pipeline or facility except pursuant to a licence issued by the Board. Permits and licences may contain such terms and conditions as the Board considers appropriate or as are prescribed by the **Regulations**.

The **Pipeline Regulations** and the **Gas Plant Facility Regulations** establish the parameters for the construction, operation, maintenance and abandonment of pipelines and gas plant facilities.

The **Underground Hydrocarbons Storage Act and Regulations** vest the responsibilities for the regulation of construction, operation, maintenance and abandonment of underground hydrocarbon storage facilities with the Board.

Motor Carrier (Public Passenger) Regulation

Statutes: **Motor Carrier Act**, R.S.N.S. 1989, c.292 as amended; **Motor Vehicle Transport Act, 1987**, S.C. 1987, c.35 (Federal) as amended.

The Board is responsible for safety regulation of all public passenger carriers within the Province and interprovincial carriers operating to or from the Province as well as economic regulation of commercial carriers. Carriers are broadly defined to include not-for-profit bus operations, school bus operations and van pools, as well as commercial bus companies. The Board holds hearings concerning licensing, setting fares and charter rates, approving routes and stops, approving equipment for use, hearing complaints against carriers, and hearing applications for modification or discontinuance of service.

The Motor Carrier Division of the Board also administers a comprehensive safety inspection program for all public passenger equipment pursuant to the **Motor Carrier Act**. School buses are classified as public passenger vehicles and, along with all other public passenger vehicles, are inspected twice annually by the inspection staff of the Division. In addition to inspecting public passenger vehicles, the staff inspects commercial vans (since January 1, 2003) and certain not-for-profit passenger vehicles although those operations are not subject to economic regulation.

As of March 31, 2005, the Division employed a Director, ten inspectors and had an office staff of three.

Railways Regulation

Statute: **Railways Act**, S.N.S, 1993, c.11, as amended

The Board hears applications for the licensing of short line railways within the Province, as well as approving the discontinuance of service and the abandonment of rail lines. The Board's jurisdiction to hear abandonment and discontinuance applications is derived from the **Act** and the **Railway Discontinuance of Services and Abandonment Regulations**.

Alcohol, Gaming and Amusements Regulation

Statutes: **Liquor Control Act**, R.S.N.S. 1989, c.260 as amended; **Gaming Control Act**, S.N.S. 1994-95 as amended, c.4; **Theatres and Amusements Act**, R.S.N.S. 1989, c.466 as amended.

The Board hears applications for permanent liquor licenses, transfer applications, requests to amend Board imposed conditions of license, and related matters. The Board also hears disciplinary/sanction matters respecting alleged violations of the **Act** and **Regulations**.

The Board hears appeals from decisions of the Alcohol and Gaming Authority staff and hears disciplinary/sanction matters involving gaming licensees. The Board also hears applications for reinstatement of access to the casinos by individuals who have voluntarily excluded themselves from those premises.

The Board hears appeals of film classification decisions of the Alcohol and Gaming Authority, Film Classification Division.

Planning and Municipal Boundaries Matters

Statutes: **Municipal Government Act**, S.N.S. 1998, c.18 as amended; **Education Act**, S.N.S. 1995-96, c.156 as amended

Duties under this statute include hearing appeals from decisions of municipal councils dealing with rezoning and development agreements; appeals from decisions of development officers respecting subdivision and development permits; applications to establish and amend the boundaries of municipalities and villages; and applications concerning the incorporation and dissolution of towns. The Board is required to periodically review polling district boundaries and determine the number of councillors. The **Education Act** requires the Board to conduct similar periodic reviews of the boundaries of electoral districts and the number of school board members of each school board in the

Province. Applications for the next periodic review of municipal polling districts must be filed by the end of 2006. Applications for the next school board reviews must be filed by 2007.

The following table provides some information on the planning appeals filed with the Board.

Planning Appeals Filed, Allowed, Dismissed and Discontinued by Year

Year Filed	Filed	Allowed	Dismissed	Discontinued
2000	32	4	13	15
2001	21	4	7	10
2002/2003*	38	6	11	21
2004	29	2	13	14
2005	43**	0	15	20

* Includes the fifteen month period from January 1, 2002 to March 31, 2003. Previous figures are for calendar years. For 2004 and future the figures are prepared on a fiscal year basis.

** Eight matters remained unresolved at year end.

Assessment Appeals

Statute: **Assessment Act**, R.S.N.S. 1989, c.23, as amended

The Board hears appeals from decisions of the Regional Assessment Appeal Courts (R.A.A.C.) respecting real property and business occupancy assessments and change of use tax levies. Assessments are revised yearly by the Director of Assessment. The number of appeals has varied sharply from year to year. Most of the appeals filed with the Board are with respect to valuation. The R.A.A.C. and the Board also have jurisdiction to consider late appeals, adding to or striking from the assessment roll, and changing the classification of property.

Expropriation Compensation Applications

Statute: **Expropriation Act**, R.S.N.S. 1989, c.156, as amended

Where a property owner and an expropriating authority cannot agree on the compensation to be paid for expropriated land, an application can be made to the Board to set the value.

Criminal Injury Compensation Appeals

Statute: **Victims' Rights and Services Act**, R.S.N.S. 1989, c.14, as amended

The Board hears appeals from decisions of the Director of Victim Services concerning applications for compensation for certain expenses incurred by victims of crime. The Board was given this jurisdiction in 1994. As of June 8, 2000, appeals are limited to applications for counselling services.

Fire Safety Appeals

Statute: **Fire Safety Act**, R.S.N.S. 2002, c.6

As of February 28, 2003, the Board hears appeals from persons affected by orders of the Fire Marshal or a Deputy Fire Marshal, including suspension of licenses for contravention of the **Fire Safety Act** or **Regulations** thereunder.

SUPPORT OF OTHER AGENCIES

The Nova Scotia Police Commission shares office space with the Board. Board staff provide support for computer systems and some administrative matters to the Commission. In addition, the Board's hearing facilities are, from time to time, used by other boards and agencies.

CONTACTING THE BOARD

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Appendix A - List of Statues

Assessment Act, R.S.N.S. 1989, c.23 as amended
Education Act, S.N.S. 1995-96, c.1 as amended
Electrical Installation and Inspection Act, R.S.N.S. 1989 c.141, s.1 as amended
Energy Resources Conservation Act, R.S.N.S. 1989, c.147, s.1 as amended
Expropriation Act, R.S.N.S. 1989, c.156, s.1 as amended
Fire Safety Act, R.S.N.S. 2002, c.6
Gaming Control Act, (Part II), S.N.S. 1994-95, c.4 as amended
Gas Distribution Act, S.N.S. 1997, c.4 as amended
Halifax-Dartmouth Bridge Commission Act, R.S.N.S. 1989, c.192 as amended
Heritage Property Act, R.S.N.S. 1989, c.199, s.1 as amended
Liquor Control Act, R.S.N.S. 1989, c.260 as amended
Motor Carrier Act (public passenger only), R.S.N.S. 1989, c.292 as amended
Motor Vehicle Transport Act, 1987, S.C. 1987, c.35 (Federal) as amended
Municipal Government Act, S.N.S. 1998, c.18 as amended
Nova Scotia Power Finance Corporation Act, R.S.N.S. 1989, c.351 as amended
Nova Scotia Power Privatization Act, S.N.S. 1992, c.8
Petroleum Resources Act, R.S.N.S. 1989, c.342 as amended
Petroleum Resources Removal Permit Act, S.N.S. 1999, c.7 as amended
Pipeline Act, R.S.N.S. 1989, c.345 as amended
Public Utilities Act, R.S.N.S. 1989, c.380 as amended
Railways Act, R.S.N.S. 1993, c.11 as amended
Theatres and Amusements Act, R.S.N.S. 1989, c.466 as amended
Underground Hydrocarbons Storage Act, S.N.S. 2001, c.37
Utility and Review Board Act, S.N.S. 1992, c.11 as amended
Victims' Rights and Services Act, R.S.N.S. 1989, c.14 as amended

Appendix B - List of Regulated Utilities

Electric Utilities
Antigonish Electric Utility
Berwick Electric Light Commission
Canso Electric Light Commission
Lunenburg Electric Utility
Mahone Bay Electric Utility
Nova Scotia Power Incorporated
Riverport Electric Light Commission

Water Utilities
Amherst Water Utility, Town of
Annapolis Royal Water Utility, Town of
Antigonish (Fringe Area), Municipality of the County of
Antigonish Water Utility, Town of
Baddeck Water Utility, The Village Commissioners of
Bridgetown Water Utility, Town of
Bridgewater Public Service Commission
Canning Water Utility, The Village Commissioners of
Canso Water Utility, Town of
Cape Breton Regional Municipality Water Utility
Cornwallis Park Water Utility
Digby Water Utility, Town of
Dingwall Water Utility
East Hants Regional Water Utility
Falmouth Water Utility
Granville Ferry Water Utility
Greenwood Water Utility
Halifax Regional Water Commission
Hantsport Water Utility, Town of
Hazel Hill Water Utility
Inverness County Water Utility
Kentville Water Commission
Lawrencetown Water Utility, The Village Commissioners of
Little Narrows Water Utility
Lunenburg Water Utility, Town of
Mahone Bay Water Utility, Town of
Margaretville Water Utility
Middleton Water Utility, Town of
Mill Cove Park Water Utility

Mulgrave Water Utility, Town of
Neil's Harbour/New Haven Water Utility
New Minas Water Utility, The Village Commissioners of
New Glasgow Water Utility, Town of
Oxford Water Utility, Town of
Parrsboro Water Utility, Town of
Pictou County Water Utility
Pictou Water Utility, Town of
Port Williams Water Utility, Village of
Port Hawkesbury Water Utility, Town of
Region of Queens Water Utility
Richmond County Water Utility
Shelburne Water Utility, Town of
Sherbrooke Water Utility
Shubenacadie Water Utility
Springhill Water Utility, Town of
St. Peter's Water Utility, The Village Commissioners of
Stellarton Water Utility, Town of
Stewiacke Water Utility, Town of
Tatamagouche Water Utility, The Village Commissioners of
Three Mile Plains/Wentworth Water Utility
Trenton Water Utility, Town of
Truro Water Utility, Town of
Westville Water Utility, Town of
Windsor Water Utility, Town of
Wolfville Water Utility, Town of
Yarmouth Water Utility, Town of